THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P.No. 16215 of 1994

Date of Decision: 23 - 8 - 2006

Brig. S.N.Gulati (Retd.) **.....Petitioner**

v.

Union of India and another **.....Respondents**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.R.L.Gupta, Advocate
for the petitioner.

Mr.Anil Rathee, Advocate
for the respondents.

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P.S.PATWALIA, J. (Oral)

The petitioner who was a Brigadier in the Indian Army was due to retire on 31.3.1987. He had been offered employment by a private company M/s Century Rayon Shahabad, Bombay after retirement. He therefore applied for permission to accept commercial employment within a period of two years after retirement by application dated 11.3.1987. The said application was forwarded by him to the Army authorities on 11.3.1987 itself. It is the petitioner's case that the application was finally rejected on 17.4.1989 after more than two years of his retirement. In the meanwhile, the petitioner had secured private employment and discharged his duties.

On 5.9.1989 a show cause notice was issued to the petitioner as to why pension should not be stopped for two years for taking up commercial

employment within two years from the date of retirement without seeking permission of the Government. The petitioner duly replied to the show cause notice on 13.10.1989. However, the petitioner's explanation was not accepted and vide order dated 23.4.1992, two years pension payable to the petitioner was forfeited. The petitioner filed an appeal against the said order of forfeiture on 21.7.1992. The petitioner contends that in spite of having submitted reminders his appeal remained undecided. It is therefore that he has challenged the order dated 23.4.1992 in the present petition vide which his pension for two years was forfeited. The respondents have filed reply to the petition. It has been stated therein that the petitioner's application for permission to seek employment was received by the respondents on 3.4.1987 and after due consideration it was rejected and rejection was conveyed to the petitioner vide letter dated 3.4.1989. It has further been contended that in terms of Regulation 18(A) of the Pension Regulations since the petitioner had taken employment within a period of two years without prior sanction of the Government, he was not entitled to pension for the aforesaid period of two years. Regulation 18(A) relied upon by the respondents is as hereunder:-

> "Regulation 18(A) - "If an officer who held the rank of Col and above, whether in substantive capacity or otherwise immediately before retirement and who is granted or is likely to be granted a pension/gratuity (including Death-cum-Retirement-Gratuity) or other benefits in respect of his/her Army service wishes to accept any commercial employment before the expiry of two years from the date of his/her retirement, he/she shall obtain the prior sanction of the Government to such acceptance and no pension shall be payable to him/her if he/she accepts a commercial employment without such sanction in respect of any period for which he/she is so employed or for such longer period as the Government may direct."
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> Part 3 of AI-2/S/74* No service or disability pension or other

recurring benefits shall be payable to an officer who accepts an employment in contravention of the provisions of para 1 above in respect of any period for which he/she is so employed or for such a longer period as the President may direct, Gratuity where due, but not already paid, shall be liable to be forfeited in part or in full as the President may".

Learned counsel for the petitioner has raised a two-fold argument. Firstly he submits that the rejection of his request for employment within a period of two years vide Annexure P-2 is bad as no reason has been given as to why the petitioner's request was rejected. Learned counsel submits that the action of the respondents in declining his request by a cryptic order without assigning any reason is itself arbitrary. He further submits that even in the order Annexure P-5 passed after the show cause notice was issued and the petitioner filed his reply no reason has been given why his request for seeking employment within a period of two years has been rejected. Apart from this, learned counsel submits that the respondents rejected his request for commercial employment in April, 1989, after the period of two years was already over. He cannot be blamed for the delay in declining his request for employment as it is respondents themselves who sat over the matter. He therefore submits that the order Annexure P-5 should be set aside and pension for the two years should be ordered to be released. Mr.Anil Rathee, learned counsel appearing for the respondents, however, states that the petitioner's request was considered in terms of the Rules and the respondents ultimately rejected it after due consideration.

After hearing learned counsel for the parties and going through the record, I am of the opinion that the claim of the petitioner is meritorious. Firstly a reading of the orders Annexures P-2 and P-5 shows that absolutely no reason has been assigned as to why the petitioner's request is being declined. The respondents cannot whimsically decline such a request unless there is some valid reason for

doing so. In the present case as there is no justification in the order declining the request of the petitioner, in my opinion, the action of the respondents is totally arbitrary. Equally I am of the opinion that once an officer makes a request seeking re-employment, the same should be considered and decided expeditiously. The respondents remained sitting over the matter for two years and declined the request when the entire period of two years had expired. Since the respondents had not declined the petitioner's request for two years, I am of the opinion that after the expiry of said period his pension for the said period cannot be denied to him.

For the aforementioned reasons, the writ petition is allowed and the order Annexure P-5 declining the petitioner's request for commercial employment is set aside. The respondents are directed to release the pension for the aforementioned period of two years to the petitioner within a period of two months from the date of receipt of a certified copy of this order.

(P.S.PATWALIA)
JUDGE

August 23 , 2006.

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